A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: **Hon'ble Shri Fakhruddin, J**
& Hon'ble Shri V.K. Shrivastava, J.

CRIMINAL APPEAL NO.660/2001

KALAP RAM

Vs

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
V.K. Shrivatava
Judge

Hon'ble Shri Justice Fakhriddin

I agree 16/9

Sd/-

Post for 16/09/2005

Sd/-
Fakhruddin
Judge
16/09/2005

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HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Fakhruddin, J &
Hon'ble Shri Vijay Kumar Shrivastava, J.

CRIMINAL APPEAL No. 660/2001

Appellant — **Kalap Ram,**
s/o. Tilak Ram Rathiya,
aged about 45 years
r/o. Charkhapara,
Manghapara,
PS Pathalgaon,
Dist. Jashpur (CG).

Vs

Respondent — **State of Chhattisgarh**
Through* PS *Pathalgaon,
Dist. Jashpur (CG)

PRESENT

Mr. Ashok Dixit, Counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State.

JUDGMENT

(Delivered on 16/09/2005)

Per Vijay Kumar Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19/06/2001 passed by the Additional Sessions Judge, Jashpurnagar , in Sessions Trial No.31/2000 by which the appellant has been held guilty for committing offence of murder punishable under Section 302 of the I.P.C., and has been sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for two months.

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2) Brief facts of the case are that on 23/12/1999 at about 12.15 p.m. deceased Babulal Sonwani driving his motor cycle bearing No. M.P. 27-C – 1343 was coming from the house of Upsarpanch – Chandra Shanker. When he reached near the house of Mohitram, appellant came there, stopped him and wielded injuries on his head by inflicting an axe blow as a result of that deceased Babulal Sonwani fell down from his motor cycle. After some time Somelal gave information to Upsarpanch Chandra Shanker that the deceased Babulal Sonwani on the way fell down from his motor cycle and has died. Thereafter, Chandra Shanker gave information to police regarding the incident and on his information; merg intimation was recorded by the Police. B.B.S. Rajput, Sub-Inspector came to the spot, prepared panch Nama of the dead body and sent the dead body for autopsy. Doctor Laxman Bankhed conducted the post mortem. On post mortem, medical officer found incised wound of size 6 cm x 2 cm x 5 cm over posterior half of vertex region (parieto occipital) transversely, oblique extending more to right side, red coloured bleeding and brain deep. Fracture of both occipital bone and parietal region and middle fossa. Medical Officer was of the opinion that the death was caused due to head injury and the death was homicidal in nature.

3) During investigation evidence of Lalita Bai, Udwaso Bai, and Ramsila Bai, who were present on the spot, have been taken and from their statements, it revealed that the appellant inflicting injuries by axe (Tangia) on deceased Babulal Sonwani caused injury on his head and as a result Babulal Sonwani succumbed to those injuries. On the memorandum of appellant axe and its handle, shirt were recovered and seized from him. The seized axe and handle was sent to Medical Officer with query who, after examining the axe and its handle, opined that the injuries found on the body of the deceased could be caused by the seized

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axe. During investigation spot map has also been got prepared by Patwari. Motor-cycle, plain earth and blood stains were seized from the spot. Plain earth, blood stains, axe and its handle and the clothes seized from the appellant were sent to FSL for chemical examination. After investigation police report has been filed in the Court of Chief Judicial Magistrate, Jashpurnagar who committed the case to sessions for trial.

4) Charge under Section 302 of the I.P.C., was framed against the appellant. Charge was read over and explained to him, who abjured his guilt and his defence was that due to enmity he has been falsely implicated in this case.

5) Learned trial Court relying on autopsy report, evidence of Medial Officer Doctor Laxman Bankhed (PW/7) and the eyewitnesses Lalita Bai (PW/1), Udwaso Bai (PW/2) and Ramsila Bai (PW/3) held the appellant guilty for committing the murder of deceased Babulal Sonwani and accordingly convicted and sentenced.

6) Both the parties are heard and record of trial Court perused.

7) Doctor Laxman Bankhed (PW/7) in his evidence has deposed that he conducted the post mortem of the body of deceased Babulal Sonwani, On examination he found incised wound of size 6 cm x 2 cm x 5 cm over vertex region (parieto occipital region) transversely, oblique extending more to right side, reddish colored margins sharp cut and wound is brain deep. Brain matter is compressed and crushed coming out through the wound. Intracranial and intracerebral hemorrhages present. Fracture of occipital bone and depressed fracture of right parietal bone was also present. There is also fracture of right

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middle fossa. Bleeding through right ear present. He has further deposed that in his opinion the cause of death was due to coma as a result of shock due to head injury. The death was homicidal in nature. His autopsy report is, Ex. P/9. He also deposed that for his examination, that one axe and its handle were produced on 26/12/1999 and in his opinion; the injury found on the body of the deceased Babulal Sonwani could have been caused by the axe. He has been cross-examined at length, but nothing substantial has been brought to discredit or disbelieve his evidence.

8) Lalita Bai (PW/1) in her statement deposed that she was at boring pump, she saw the appellant coming with an axe and at that time deceased Babulal Sonwani was coming on his motor cycle. Appellant with that axe inflicted blow on the head of Babulal, who received injuries on the head and fell down. Udwaso Bai (PW/2) was also present near boring pump, who in her statement deposed that the appellant came carrying an axe in his hand and with that axe he inflicted injuries on the head of Babulal Sonwani who was on his motor cycle. Babulal Sonwani fell down and died on the spot. Ramsila Bai (PW/3) was also present near boring pump, who in her statement deposed that she was taking bath at that time and she saw the appellant running away with an axe from there.

9) From the cross examination of Lalita Bai (PW/1), Udwaso Bai (PW/2) and Ramsila Bai (PW/3), it has been brought that the appellant is nephew of witness Chandra Shanker. Chandra Shanker is Upsarpanch. The houses of appellant and Chandra Shanker are adjoining and the relation between appellant and Chandra Shanker is not cordial. The village in which they are residing, has two groups, one is headed by Chandra Shanker and another by Mansingh. Appellant belonged to the

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group of Mansingh. They accompanying Chandra Shanker went to the Police Station and their statements were recorded by the Police under the dictation of Chandra Shanker . Ramsila Bai (PW/3) also admitted that in recording her statement by the Police, Chandra Shanker was instrumental to it. Lalita Bai (PW/3) and Udwaso Bai (PW/2), in their cross examination have deposed that they did not state before the Police that the appellant by using both the hands inflicted blows by an axe on the head of Babulal Sonwani, but they were not confronted with their police statements. Only difference appears to be brought is that both the witnesses narrated before the Police that the appellant wielded injuries by inflicting axe blows on the head of Babulal Sonwani. Only omission brought is that they did not tell that both the hands were used by the appellant. Chandra Shanker (PW/4) who is the uncle of the deceased in cross-examination has admitted the fact that the village is divided into two groups, one group belongs to him and another is of Mansingh. Earlier appellant was in the group of Mansingh, but later on came in his group. All the witnesses belonged to his group. He denied the fact that he was instrumental in getting recorded the statements of Lalita Bai (PW/1), Udwaso Bai (PW/2) and Ramsila Bai (PW/3). The appellant's house and his house are adjoining. Appellant has a son who is presently residing in the village.

10) Learned counsel for the appellant contended that merg intimation i.e,. Ex.P/1 and Panch nama of dead body Ex/P2 suggest that the deceased died as a result of motor accident, therefore, the appellant could not be implicated in the crime of murder. Ex.P/1 has been recorded on the report of Chandra Shanker (PW/4). In Ex.P/1 itself, Chandra Shanker had reported that Somelal informed that Babulal Sonwani fell down from the motor cycle. In Ex.P/2 also on spot inspection, it was found that the deceased was lying over the motor cycle. Neither Ex.P/1 has

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been recorded on the basis of eyewitnesses nor Ex.P/2 has been conducted on the information of eyewitnesses. Therefore, both these documents are not substantial to discredit the version of eye-witnesses. From the medical evidence, also it is clear that only one blow over the head of Babulal Sonwani has been caused. No other injuries were found on the body of the deceased and it is known to everybody that if any motor accident occurs certainly a number of injuries must be caused on the body of the person who met with an accident. From the medical evidence as well as the evidence of eyewitnesses, it is clear that the deceased was on motorcycle and was stopped by the appellant who gave axe blow on his head. On receiving injuries on the head, the deceased fell down as a result of that dead body was lying on the motor cycle and only one injury was found on his head.

11) From the evidence of B.B.S. Rajput (PW/6), Sub-Inspector, it has been proved that on memorandum an axe and its handle were seized from the appellant and from the evidence of PW/7 it was also proved that the seized axe was sent to him for examination and he on examination, was of the opinion that the injuries caused over the body of the deceased could have been caused by the axe.

12) Hon'ble the Apex Court rendering judgment in **Banti alias Guddu Vs. State of M.P., reported in 2004 (1) Supreme Court Cases 414 held that;**

> ***"E. Criminal Trial – Witnesses – Eyewitness – Their presence at the spot of occurrence – From their cross-examination nothing infirm could be elicited to cast a doubt on their veracity – No reason suggested why they would falsely implicate the accused, nor any motive suggested for such false implication – Merely***

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because one of them was a relation (brother) of deceased and the other one was known to him, that per se cannot be a ground to discard their evidence – When their evidence was carefully scrutinized and found acceptable by both trial court and High Court, held, there is no reason for Supreme Court to take a different view."

13) From reading the evidence of Lalita Bai (PW/1), Udwaso Bai (PW/2) and Ramsila Bai (PW/3) as a whole and also considering the omission brought in the evidence of Lalita Bai and Udwaso Bai not material, their evidence on the substantial point does not appear to be incredible. There is nothing to establish that the appellant has been falsely implicated and only because of presence of groupism in village or taking interest by Chandra Shanker, the uncle of the deceased, the evidence of all the three eye-witnesses on careful scrutiny found to be credible, cannot be thrown out. As regards theory of accident is concerned, medical evidence itself is sufficient to disbelieve the same.

14) Learned trial Court has very elaborately and meticulously dealt all the points raised by the defence and the statements of witnesses and after evaluating the evidence held the appellant guilty for committing offence of murder.

15) We are of the opinion that there is nothing substantial on record to show or prove that the finding recorded by the trial Court is perverse or erroneous or calls for any intervention. The trial Court has rightly arrived at the finding. There is no infirmity in the judgment of conviction and order of sentence passed by the trial Court.

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16) In the result, the judgment, conviction, and order of sentence passed by the trial Court are maintained and the appeal is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivatava
Judge

Raju